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Noteworthy:

GOP: Leahy flips on filibuster, *RUTLAND HERALD*, LOUIS PORTER
Excerpts:
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Lawrence Butler, an assistant professor at New Jersey's Rowan University who wrote about the issue for the congressional newspaper The Hill, thinks the situation in 1975 and the current proposal are alike.

"I think the two circumstances are very similar," Butler said in a telephone interview.

Nobody should be surprised that the positions of Leahy and other Democrats have changed with the balance of power, Butler said.

"It's politics as usual," he said. "It's so much politics as usual you end up having respect for the people who are consistent over the years."

Full Story: **GOP: Leahy flips on filibuster,** *RUTLAND HERALD*, LOUIS PORTER

Filibuster myth-busters, *WASHINGTON TIMES*, Wendy E. Long

Myth vs. Fact:
Myth: The Constitutional option is unprecedented.

Fact: Senate Democrats have used the Constitutional option in the past.

- **As Majority Leader in 1979, Senator Byrd expressly threatened to use the Constitutional option in order to leverage successfully a time agreement on a rules change resolution: "Let the Senate vote on amendments, and then vote up or down on the resolution. … if I have to be forced into a corner to try for a majority vote, I will [change the rules] because I am going to do my duty as**

I see my duty, whether I win or lose." (Sen. Robert Byrd, *Congressional Record*, 1979, pp. S144-45)

- **Senator Byrd led the creation of precedents in 1977, 1979, 1980 and 1987 to stop filibusters and other delaying tactics previously allowed under Senate rules or precedents.** "Mr. Byrd led the charge to change the rules in 1977, 1979, 1980 and 1987, and, in some cases, to do precisely what Republicans are now proposing." (Editorial, "Sen. Byrd On Filibuster-Busting," *The Washington Times*, 3/7/05)

GOP: Leahy flips on filibuster

RUTLAND HERALD
By LOUIS PORTER
April 15, 2005

Sen. Patrick Leahy has vigorously opposed changing the rules governing filibusters, a move being pushed by Republicans in the U.S Senate.

But, much to the delight of some Republicans in the state, the Vermont Democrat apparently supported similar changes three decades ago when his party was in the majority.

Republicans in the U.S. Senate, angered over the blockading of some of President Bush's judicial nominees, have called for using the so-called "nuclear option" by making changes that would make it easier to end debate and force a vote on the nominees.

Leahy has called the proposal "a leap not only toward one-party rule and absolute majoritarianism in the Senate but to an unchecked executive" and an "assault on our tradition of checks and balances and on the protection of minority rights in the Senate and in our democracy."

But in 1975, when a bipartisan group of senators were trying to push a series of progressive bills through despite opposition, Leahy and others supported reducing the number of votes needed to end the debate.

That change reduced the number of votes needed from 67 to 60. The current changes proposed by Republicans would reduce the number needed to force a vote to a simple majority.

Small states like Vermont have the most to lose if a party with the majority can end a debate and force a vote, said David Carle, a Leahy spokesman. The issues and the time made the 1975 vote different, he said.

"It was a different procedure for one thing and different issues were involved," Carle said.

Some Vermont Republicans said Leahy's outrage at the Republican's pro-posed change is hypocritical.

"Pat Leahy has gotten away with this sort of hypocrisy for a long time," said James Barnett, chairman of the Vermont Republican Party. "When it is good for Pat Leahy to use the nuclear option, he supports it. When it is good for Republicans, he would shut the Senate down."

Lawrence Butler, an assistant professor at New Jersey's Rowan University who wrote about the issue for the congressional newspaper The Hill, thinks the situation in 1975 and the current proposal are alike.

"I think the two circumstances are very similar," Butler said in a telephone interview.

Nobody should be surprised that the positions of Leahy and other Democrats have changed with the balance of power, Butler said.

"It's politics as usual," he said. "It's so much politics as usual you end up having respect for the people who are consistent over the years."

One of those people is Sen. Robert Byrd, D-West Virginia, Butler said.

Byrd opposed the change, which would have ended filibusters in 1975 and opposes the current changes being considered.

The senators who support the changes were short-sighted in both cases, Butler said, because they didn't anticipate that they would lose control.

"It's a standard pathology of politicians that they think short-term," he said.

Frank Bryan, a political science professor at the University of Vermont, said it is common for politicians' opinions to change depending on who is in power and what they want.

"If you go back far enough, you can hoist someone on their own petard," he said. "They can change their minds and do all the time. … I don't think this is cynicism really. I don't think smart people expect different."

Bryan added, "Judges are getting more and more involved in public policy. I don't find it surprising that representatives of the people on both sides are pulling out all the stops to control the courts."

Anybody considering changing U.S. Senate rules to get through some legislation should be careful, Butler said. In 1975, senators who opposed the legislation being supported by

Leahy and others found another way to halt its progress, and Democrats will this time if the changes go through, Butler said.

"A successful use of the nuclear option would demolish the Senate as it has existed for more than two centuries," Butler wrote in The Hill.

Filibuster myth-busters

WASHINGTON TIMES
By Wendy E. Long

If you were a senator, whose views would be more important to you: liberal special-interest groups, or registered voters?

The liberal groups demand that Democrats filibuster (prevent the Senate from voting on) some of President Bush's best-qualified nominees to the federal appeals courts. But a recent Ayres McHenry nationwide survey reveals that 82 percent of registered voters believe well-qualified nominees deserve a Senate vote. That includes 85 percent of Republicans, 81 percent of Democrats, and 81 percent of Independents.

Some Senators apparently believe voters won't see through partisan obstructionism. But they can't possibly believe the other myths about the filibuster.

Myth No. 1:Filibuster of judges is a sacred tradition.

Fact: The filibuster is nowhere in the Constitution. It is not among the "checks and balances" our Founding Fathers created. It did not even exist until the 1830s, and the "tradition" involves legislation, not judicial appointments. The filibuster was used to defend slavery and oppose the Civil Rights Act — hardly noble purposes. The current obstruction of judges is no "traditional" filibuster: it is the first time in more than 200 years that either party has filibustered to keep judges with majority support off the federal bench.

Myth No. 2: Mr. Bush's nominees are being treated no differently than other presidents' nominees.

Fact: In the last Congress, 10 of the president's 34 appellate nominees were filibustered — the lowest confirmation rate since FDR. Democrats mask their sabotage of these nominees by citing the confirmation rate of judges to federal courts overall — an irrelevant statistic, because the federal courts of appeal make final rulings on most issues of constitutional law. Liberals also argue that Abe Fortas was not confirmed as Chief Justice in 1968. But Mr. Fortas was opposed by a Senate majority (both Republicans and Democrats), and President Johnson withdrew the nomination. Today, a Senate majority supports the nominees, and the president is not withdrawing them.

Myth No. 3: The Senate has a "co-equal" role with the president in judicial nominations.

Fact: The Constitution expressly gives the president — and only the president — the power to nominate federal judges. All the Senate can do is say "yes" or "no" to the president's choices. That is the "check" in the "checks-and-balances" system, to make sure no unqualified nominee becomes a federal judge. It does not give Senators — and a minority of Senators at that — the power to insist on judges who suit their own ideology.

Myth No. 4: The current filibuster is about "free speech."

Fact: Historically, the filibuster has given senators in the minority a chance to speak on the Senate floor before the majority rushes to pass a bill. But the current filibuster is not about the right to speak out. It is about blocking judges. These nominees have been pending for months — some for years. There has been, and remains, ample time to speak about them. The majority welcomes free speech and free debate — followed by a free vote.

Myth No. 5: The filibuster protects "the right of the minority" to veto nominees.

Fact: The Constitution requires two-thirds vote for certain things. Appointing judges is not one of them. So the basic principle of democracy applies: The majority decides. The filibuster of judicial nominees turns majority rule on its head, because 41of 100 senators can keep a judge off the bench without ever even voting.

A liberal minority needs federal judges to advance their agenda — allowing child pornography as free speech, mandating same-sex marriage, removing "under God" from the Pledge of Allegiance, banning school prayer and preventing the death penalty for murderers and terrorists — because they can't win these issues at the ballot box. Mr. Bush promised to nominate judges who will apply the law as written and stay out of politics. The recent Ayres survey shows 67 percent of voters agree that "we should take politics out of the courts and out of the confirmation process." A full 61 percent of Democrats agree with this statement, as well as 73 percent of Independents and 69 percent of Republicans.

The American people want senators to do the job our tax dollars pay them to do. Senators who fail to do their jobs — either by failing to show up for their committee meetings, by voting against restoring the Senate tradition of up-or-down votes for judges, or by halting the work of the federal government — might find themselves out of work when they really need the consent of the governed: at their next election.